

FACT SHEET

SUBJECT: Federal Facility Compliance Act of 1992

1. PURPOSE. To inform commanders and supervisors of the key provisions and the potential impact of the Federal Facility Compliance Act of 1992 (FFCA).

2. FACTS.

a. In response to the public's perception that the federal government has a poor record of environmental compliance, Congress recently passed the FFCA. On 6 Oct 92 the President signed it into law. The Act is an attempt to force federal facilities to improve their performance in managing solid waste and hazardous waste and materials by removing the protection we have enjoyed from state fines and Environmental Protection Agency (EPA) enforcement actions for regulatory violations.

b. Specifically, the FFCA waives the federal government's sovereign immunity from state demands for civil fines for violations of solid and hazardous waste laws; the waiver will also affect the amount of fees we are required to pay to the states. In addition, it allows the EPA to initiate enforcement action against a federal facility as though it were a private party.

c. Fines will be paid from the installation's Operations and Maintenance funds. They can be potentially very costly because hazardous waste regulations are very exacting and easily violated. This provision requires enhanced attention from commanders and supervisors to the handling of hazardous waste and materials by subordinates.

d. The Act protects federal employees from personal liability for civil penalties under solid or hazardous waste laws with respect to acts or omissions within the scope of their official duties. However, it states that employees shall remain subject to criminal sanctions, including fines or imprisonment.

e. The Act also contains certain provisions designed to accommodate military interests. One such provision requires

the EPA to issue special regulations identifying when military munitions become hazardous waste and providing for the safe storage and transportation of military munitions that become waste. These regulations are supposed to be in place by 1995.

3. POC is the Administrative Law Division at 4-7414/4668.

VINCENT C. NEALEY
Chief, Administrative Law

Division

FACT SHEET

SUBJECT: A Soldier's Guide to Environmental Law

1. PURPOSE. To provide tips on how to comply with environmental laws.

2. FACTS.

a. Soldiers must comply with environmental laws and regulations. Violations cause environmental damage and may subject the soldier to fines and even to jail. A DoD employee at Fort Meade learned this the hard way. He was convicted by a federal court by violating an environmental protection law and was sentenced to 8 months in jail. Here are a few tips on how to comply with the law.

b. Even common substances like paint or used motor oil can damage our environment. A good rule of thumb is that any substance, except water or other natural material, must be collected and stored for turn-in. It may not be dumped down drains, sinks, or placed in the trash. Unauthorized disposition can result in severe, criminal penalties. So can cover-ups.

c. Petroleum, oils, and lubricants (POL) must be stored and transported in suitable containers. Store each type of waste POL separately.

d. If POL is spilled, take immediate action to contain it and to keep it from entering storm drains or bodies of water. All spills, no matter how small, must be reported to the Fort Knox Fire Department. Failure to call can be a criminal violation. The fire department can advise on cleanup, and, if other agencies must be told of the spill, they will do it for you.

e. To dispose of waste POL, put it in suitable, marked containers and take it to your unit's central collection point. Ensure that it is taken from there to the Defense

Reutilization and Marketing Office for final disposition.

f. Great care must be taken when you refuel in the field. Semipermanent refueling points will be no closer than 500 feet to any lake or stream. Ground storage POL bladders must be protected with an earthen berm that has been constructed IAW TM 5-848-2.

ATZK-JAA

SUBJECT: A Soldier's Guide to Environmental Law

g. A unit in the field generates waste. This waste can damage our environment. To protect our environment, the simple rule is, if you brought it to the field, take it back when you leave. All areas must be policed before the unit leaves the area. All refuse and garbage must be returned to garrison or to a DEH approved dump. None will be buried or burned in the field. Additionally, all commo, concertina, and barbed wire must be collected and removed when training is completed. Waste POL must be disposed of in the manner discussed above.

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VINCENT C. NEALEY
Chief, Administrative Law

Division

10 Oct

97

FACT SHEET

SUBJECT: Conviction of Army Employees for Environmental Crimes

1. PURPOSE. The purpose of this fact sheet is to inform you of the contents of DA WASH DC/DAJA-LT message 032000Z Mar 89.

2. FACTS.

a. On 23 February 1989, a Federal Prosecution in Baltimore resulted in the convictions of three civilian employees of the U.S. Army Chemical Research, Development and Engineering Center, Aberdeen Proving Ground, Maryland. The individuals were found guilty of violations of the Hazardous Waste Provisions of the Resource Conservation and Recovery Act (42 U.S.C. Section 6928(0)) and the Clean Water Act (33 U.S.C. Sections 1311(A), 1319(D)) arising out of the performance of their managerial duties.

b. The announcement of the convictions warrants emphasizing Army policy on environmental compliance. It is Department of the Army policy to fully comply with all applicable environmental laws and regulations. In addition to this institutional requirement for such compliance, the waivers of sovereign and official immunity in environmental statutes raise a great potential for individual criminal and civil liability.

c. All Army commands must remain sensitive to the requirements of all applicable environmental statutes and aggressively assist their subordinates in meeting those requirements.

3. POC is the Administrative Law Division at 4-7414/4668.

VINCENT C. NEALEY

Division

Chief, Administrative Law

FACT SHEET

SUBJECT: Employee Criminal Liability for Environmental Hazards

1. PURPOSE. To provide information on a recent U.S. Court of Appeals decision upholding the criminal conviction of a Department of the Army employee for violating environmental laws.

2. FACTS.

a. The maintenance foreman at an Army installation firing range instructed several of his workers to unload numerous old cans of paint into a manmade pit filled with water. After approximately 50 of the cans were unloaded, several workers noticed paint leaking into the water and notified the maintenance foreman. He directed that the remaining cans be stacked on the ground away from the pit. Two weeks later, the maintenance foreman instructed a worker to cover up the pit with dirt. A worker reported the incident and the maintenance foreman was convicted in Federal District Court of failing to report the release of a hazardous substance -- paint.

b. On appeal, the primary issue was whether the position of maintenance foreman was at a high enough level to be considered as "in charge" of the facility where the release occurred. The court decided that if the person was in a position to detect, prevent and abate a release of hazardous substances, that person was "in charge" and could be held criminally liable.

c. Personnel at all levels must ensure that activities for which they have responsibility are conducted in accordance with all federal and applicable state environmental laws.

3. POC is the Administrative Law Division at 4-7414/4668.

Division

VINCENT C. NEALEY
Chief, Administrative Law

FACT SHEET

SUBJECT: Liability of Commanders for Violations of Environmental Statutes

1. PURPOSE. To provide general information regarding the various theories of liability under which a commander may be subject to prosecution for violations of environmental statutes.

2. FACTS. Various federal environmental statutes provide civil and criminal penalties for violations. Commanders who take specific actions in violation of an environmental statute are clearly subject to prosecution. Additionally, commanders may be liable to criminal prosecution or civil liability even if they were not a direct participant in the violation.

a. The commander who does not act promptly to prevent or correct environmental violations by subordinates may be subject to prosecution even though he or she had no direct or indirect involvement in the violation.

(1) In U.S. v. Johnson-Towers, the Supreme Court found individuals liable who, by virtue of their managerial positions, should have known the statutory and regulatory requirements and had the responsibility to ensure they were met.

(2) In U.S. v. Dee, Lentz and Gepp, a case involving three high ranking civilian employees at Aberdeen Proving Grounds, the judge instructed the jury that they could convict the defendants if the jury was satisfied that they deliberately closed their eyes to violations that were occurring at Aberdeen or refused to be enlightened or take notice of said violations. In other words, willful blindness to the existence of a violation would not be a defense.

(3) Though not yet applied to the military, courts have upheld criminal convictions of senior corporate officials, who were not personally involved in the wrongful

acts, under the theory that they consciously screened themselves from a matter they had the power to prevent or correct. The Supreme Court noted that these officials failed to create a "climate of compliance" in their companies.

b. The Environmental Protection Agency has taken the position that "managers have the responsibility to affirmatively seek out, detect and prevent violations, and take steps to curb the actions of subordinates ahead of time."

ATZK-JAA

SUBJECT: Liability of Commanders for Violations of
Environmental Statutes

c. Common sources of environmental law violations include improper disposal of solvents and petroleum products in motor pools, improper storage of hazardous chemicals, dumping unit excess property in training areas after unit inventories or motorpool inspections, and failing to notify DPW of accidental chemical spills.

d. Commanders need to be aware that liability for a violation of environmental statutes can come from direct participation or acquiescence in the violation, failure to properly monitor subordinates' actions, deliberately shielding oneself from knowledge of potential violations, or failure to ensure that required actions are properly done.

3. For more information about Commanders' responsibilities concerning environmental regulatory compliance, contact DEH or Mr. Hill at Administrative Law, 4-7414/4668.

VINCENT C. NEALEY
Chief, Administrative Law

Division

10 Oct

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(27)

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